

**Georgia State University College of Law**  
**Reading Room**

---

Georgia Business Court Opinions


---

10-2-2013

Order on Motion to Strike Expert Reinaldo Pascual  
(Anatoly Melamud et al.)

Melvin K. Westmoreland  
*Fulton County Superior Court, Judge*

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Business Organizations Law Commons](#), and the [Contracts Commons](#)

---

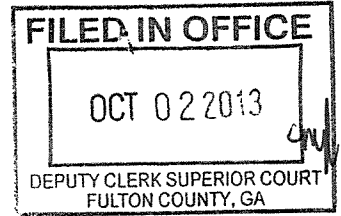
**Institutional Repository Citation**

Westmoreland, Melvin K., "Order on Motion to Strike Expert Reinaldo Pascual (Anatoly Melamud et al.)" (2013). *Georgia Business Court Opinions*. 300.  
<https://readingroom.law.gsu.edu/businesscourt/300>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

**COPY**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**



**ANATOLY MELAMUD, LETOTECH, )  
INC., and QUANTPLAT LLC, )**

**Plaintiffs, )**

**v. )**

**Civil Action File No. 2012-CV-219444**

**PAGE, PERRY, & ASSOCIATES, LLC, )  
and J. STEVEN PARKER, )**

**Defendants, )**

---

**ORDER ON MOTION TO STRIKE REINALDO PASCUAL**

This matter is before the Court on Plaintiffs' Motion to Strike the Purported Expert Opinion of Reinaldo Pascual. Upon consideration of the motion, the briefs and the record of the case, this Court finds as follows:

Defendants Page, Perry & Associates, LLC ("Page Perry"), and J. Steven Parker ("Parker") identified attorney Reinaldo Pascual as an expert qualified to testify regarding the following matters:

1. No attorney-client relationship was formed between Parker and Page Perry on the one hand and Mr. Melamud, Letotech or Quantplat, LLC on the other;
2. Any belief claimed by Mr. Melamud, Letotech, or Quantplat that any of them enjoyed an attorney client relationship with Parker or Page Perry at any time was not objectively reasonable under the circumstances;

3. Parker and Page Perry owed no professional duties to Plaintiffs and had no obligation to advise any Plaintiff that neither Parker nor Page Perry were not representing them and were representing only Lighthouse, DeHaan & Co. and Benjamin DeHaan;
4. Page Perry and Parker acted reasonably and within the standard of care in keeping confidential from Plaintiffs and not disclosing confidential information obtained in the course of representing Lighthouse, DeHaan & Co. and/or Ben DeHaan, and they did not have an obligation to advise Plaintiffs of their intent to withdraw from representation of their clients, Lighthouse, DeHaan & Co. and DeHaan;
5. Neither Parker nor Page Perry breached any legal duties in the course of their representation of Lighthouse, DeHaan & Co. or Ben DeHaan and they acted within the standard of care in the performance of their duties undertaken for these clients;  
and
6. Alina Sinter, an associate of Wargo French, had a continuous attorney-client relationship with Plaintiffs during the relevant time periods and Singer breached the standard of care in her representation of one or more Plaintiffs.

Plaintiffs move to strike Mr. Pascual because they contend that he does not have relevant experience in legal ethics or malpractice and therefore, is not qualified to testify regarding the formation or breach of the attorney-client relationship; and because Mr. Pascual has not reliably applied principles and methods to the facts of this case. Specifically, they argue that he applies an incorrect legal standard to the question of whether an attorney client relationship was formed, and his opinion regarding Alina Singer's breach of the standard of care is not supported by the evidence.

1. **Mr. Pascual Does Not Qualify As An Expert in Legal Ethics**

Plaintiffs argue that Mr. Pascual must have specific expertise in legal ethics to opine on the first 3 topics identified above, over and above a law degree. Defendants counter that Mr. Pascual can be qualified as an expert based on practical experience alone, and that his 25 years of experience representing clients in business transactions qualifies him to opine about whether an attorney client relationship was formed between Plaintiffs and Defendants and whether it was reasonable for Mr. Melamud to believe that such a relationship was formed.

Pursuant to O.C.G.A. § 24-7-702(b), a witness can qualify as an expert and render opinion testimony if:

scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, ...[and]:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.

O.C.G.A. § 24-7-702(f) allows a trial court to apply the factors from Daubert and other federal authority when assessing the reliability of expert testimony.

An expert can be qualified as such on the basis of experience. “There are many different kinds of experts and many different kinds of expertise, and it follows that the test of reliability is a flexible one, the specific factors neither necessarily nor exclusively applying to all experts in every case.” HNTB Ga., Inc. v. Hamilton-King, 287 Ga. 641, 643 (2010); see also Levine v. SunTrust Robinson Humphrey, 321 Ga. App. 268, 278 (2013) (upholding district court's admission of banking expert's testimony even though its determination of the reliability of his

testimony rested largely upon his experience in the industry)). “In some cases (even cases involving non-scientific expert testimony), the factors may be pertinent, while in other cases the relevant reliability concerns may focus upon personal knowledge or experience. Whether Daubert's specific factors are, or are not, reasonable measures of reliability in a particular case is a matter that the law grants the trial judge broad latitude to determine.” *Id.*

The Daubert standard is liberal and favors admissibility. See e.g., KSP Investments, Inc. v. U.S., 2008 WL 182260 (N.D. OH 2008) (“As commentators have noted, Rule 702 evinces a liberal approach regarding admissibility of expert testimony. Under this liberal approach, expert testimony is presumptively admissible.”); In re Scrap metal Antitrust Litigation, 527 F.3d 517, 530 (2008) (“[R]ejection of expert testimony is the exception, rather than the rule.”); see also Mason, 283 Ga. at 279 (holding that it is “proper to consider and give weight to constructions placed on the federal rules by federal courts when applying or construing” O.C.G.A. § 24-7-67.1 because the Georgia statute was based upon Rule 702 and Daubert).

However, “whether a proposed expert’s experience is sufficient to qualify the expert to offer an opinion on a particular subject depends on the nature and extent of that experience.” U.S. v. Cunningham, 679 F.3d 355 (6<sup>th</sup> Cir. 2012). As a result, the question is whether the expert’s experience is sufficiently “extensive and specialized” to qualify him as an expert on the topic at hand. *Id.*

Plaintiffs argue that Mr. Pascual must be qualified in the area of legal ethics in order to opine on the formation of attorney client privilege. In support, Plaintiffs rely on Vaxiion Therapeutics, Inc. v. Foley & Largner LLP, 593 F. Supp. 2d 1153 (S.D. Cal. 2008), which involved whether a patent attorney could be qualified as an expert on legal ethics and conflicts of

interest. In that case, the Court addressed whether a patent law attorney could qualify as an expert on the issue of a law firm's representation of two rival companies racing to file identical patent applications, and found that his mere awareness of an ethics rule was not sufficient to render him an expert. *Id.*

In contrast, the issue on which Mr. Pascual's testimony is offered is on a matter fundamental to the practice of law—whether an attorney has formed a formal relationship with a client—within the ken of the average practicing legal professional. Mr. Pascual has over 25 years' experience as a corporate attorney, who must routinely exercise his competency in balancing the expectations of a non-client during the often murky effort to execute the shared goals of both parties in a transactional setting. With no authority that holds that a lawyer is not qualified to opine on the formation of an attorney-client relationship, the Court is hard pressed to strike Mr. Pascual's testimony here.

**2. Mr. Pascual Failed to Apply the Correct Standard to Reach His Opinions**

Plaintiffs' argument here is a mischaracterization of Mr. Pascual's testimony and a simple disagreement with Mr. Pascual's conclusions. These arguments provide no basis upon which to exclude Mr. Pascual's opinions and should be reserved for cross-examination.

**SO ORDERED this 2nd day of October, 2013.**

  
MELVIN K. WESTMORELAND, SENIOR JUDGE  
Superior Court of Fulton County  
Atlanta Judicial Circuit

**Copies to:**

<b>Attorneys for Plaintiffs</b>	<b>Attorneys for Defendants</b>
<p>Joseph D. Wargo Ryan D. Watstein Eric J. Garber WARGO FRENCH LLP 99 Peachtree Street, N.E. 26<sup>th</sup> Floor Atlanta, GA 30309 (404) 853-1500 <a href="mailto:jwargo@wargofrench.com">jwargo@wargofrench.com</a> <a href="mailto:rwatstein@wargofrench.com">rwatstein@wargofrench.com</a> <a href="mailto:egarber@wargofrench.com">egarber@wargofrench.com</a></p>	<p>Christine L. Mast Lane Young Matthew G. McLaughlin HAWKINS PARNELL THACKSTON &amp; YOUNG, LLP 4000 SunTrust Plaza 303 Peachtree Street Atlanta, GA 30308 (404) 617-7400 <a href="mailto:cmast@hptylaw.com">cmast@hptylaw.com</a> <a href="mailto:mmclaughlin@hptylaw.com">mmclaughlin@hptylaw.com</a></p>